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Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul

Summary

In the present report, the Special Rapporteur on the independence of judges and lawyers clarifies the notion of judicial accountability and highlights its importance in the light of the fundamental principle of judicial independence. The main goal of the report is to demonstrate that judicial accountability and judicial independence are two essential elements of an independent, impartial and efficient justice system, and that, as a consequence, States should undertake efforts to develop and adopt international standards for judicial accountability to guide the enactment of domestic legislation establishing a comprehensive system of judicial accountability which is effective, objective, transparent and respects judicial independence.

Following a brief outline of the activities carried out by the Special Rapporteur in 2013 and 2014, the thematic section of the report first considers concepts and definitions of judicial accountability, highlighting its importance for upholding the rule of law and strengthening the independence of the judiciary. The report then examines existing international human rights standards relating to judicial accountability. It continues with an analysis of the different forms of judicial accountability and the mechanisms and proceedings for its implementation. The report then addresses the issue of State responsibility and the right to a remedy for people whose human rights have been violated as the result of a wrongful conviction or miscarriage of justice. The final two sections contain the Special Rapporteur's conclusions and a number of recommendations aimed at assisting States in adopting and implementing appropriate and effective judicial accountability mechanisms, in line with the principle of the independence of the judiciary, which will contribute to improving the administration of justice and upholding the rule of law.

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I. Introduction

1. The present report is submitted in accordance with resolution 17/2 of the Human Rights Council.

2. Following a brief outline of the activities of the Special Rapporteur in 2013 and early 2014, the thematic section of the report concentrates on judicial accountability. The report starts by discussing the notion and definitions of accountability and judicial accountability. It then highlights existing international and regional human rights standards relating to judicial accountability and proceeds to analyse the connection between judicial accountability and judicial independence. The report examines different forms of judicial accountability and the various mechanisms that can be implemented to ensure that the justice system is duly held to account while respecting its independence. Lastly, the report addresses the responsibility of the State for miscarriages of justice and the implementation of the right to a remedy in the context of judicial accountability.

3. The Special Rapporteur observes that, as the enforcement of human rights ultimately depends upon the proper administration of justice, an independent, competent and impartial justice system is paramount if it is to uphold the rule of law. The independence of the judiciary is not, however, an absolute concept and it should not be used with the sole purpose of granting personal benefits and limitless powers to judges, prosecutors and lawyers (hereafter "justice operators"). Indeed, while justice operators must enjoy some privileges and immunities because of their functions and in order to ensure their independence and impartiality, they must also be accountable for their actions and conduct so that the guarantees of their independence are not abused.

4. The Special Rapporteur aims to demonstrate that when proper mechanisms are in place, judicial accountability should and will contribute both to increasing public trust in the justice system and to reinforcing judicial independence. In particular, she examines the grounds on which and the processes through which each justice operator can be held accountable. Her analysis, conclusions and recommendations are based on an overview of international and regional human rights standards, principles and jurisprudence.

II. Activities in 2013 and 2014

A. Country visits and communications with Member States

5. The Special Rapporteur carried out official visits to the Russian Federation, from 15 to 25 April 2013 (A/HRC/26/32/Add.1), the State of Qatar, from 19 to 26 January 2014, and the United Arab Emirates, from 28 January to 5 February 2014, at the invitation of the respective Governments. She will present her reports on the visits to Qatar and the United Arab Emirates at the twenty-ninth session of the Human Rights Council, to be held in 2015.

6. Since she last reported to the Human Rights Council, the Special Rapporteur has sent requests for official visits to the Governments of Argentina, China, Egypt, Fiji, France, Germany, Greece, the Holy See, India, Iraq, Italy, Kenya, Nepal, the Philippines, Portugal, Spain, Tunisia, the United States of America and the Bolivarian Republic of Venezuela. She would like to thank the Government of Morocco for inviting her to visit the country. She encourages those Governments who have yet to respond to her requests to consider extending an invitation to visit in the near future.

7. From 2 March 2013 to 1 March 2014, the Special Rapporteur sent a total of 84 communications alleging violations of human rights in the context of her mandate to

42 Member States and other entities. Of the communications sent, 60 were urgent appeals and the remaining 24 were letters of allegation. Details of the communications and responses from Governments are included in the communications reports of special procedures (A/HRC/24/21; A/HRC/25/74; and A/HRC/26/21).

B. Other activities

8. On 28 February and 1 March 2013, the Special Rapporteur attended the global thematic consultation on governance and the post-2015 development agenda organized by the United Nations Development Programme in Johannesburg, South Africa.

9. From 5 to 9 May 2013, she participated in the sixty-second session of the General Assembly of the Latin American Federation of Judges and the annual meeting of the Iberoamerican Group of the International Association of Judges, held in Santiago, Chile.

10. On 28 May 2013, during the twenty-third session of the Human Rights Council, the Special Rapporteur presented her annual thematic report which focused on legal aid (A/HRC/23/43 and Corr.1). She also presented reports on her official visits to El Salvador (A/HRC/23/43/Add.1), Maldives (A/HRC/23/43/Add.3) and Pakistan (A/HRC/23/43/Add.2), and on the subregional consultation on the independence of the judiciary in Central America (A/HRC/23/43/Add.4). On 29 May, she participated as a panellist in a side event on the independence of the judiciary in the Russian Federation.

11. From 24 to 28 June 2013, the Special Rapporteur participated in the twentieth annual meeting of special procedures mandate holders and the Vienna Declaration and Programme of Action +20 conference, held in Vienna.

12. On 12 July 2013, she was invited to participate in consultations with the Executive Secretariat and Special Rapporteurs of the Inter-American Commission on Human Rights in Washington D.C.

13. From 5 to 6 August 2013, the Special Rapporteur participated in a conference in Lima on judicial independence and dignity, organized by the National Association of Magistrates of Peru, at which she presented a statement about judicial independence.

14. On 12 and 13 September 2013, she participated in various activities in Asunción concerning human rights indicators on the right to a fair trial, organized by the Supreme Court of Justice of Paraguay, during which she presented a statement welcoming the indicators.

15. From 5 to 10 October 2013, she participated in the fifty-sixth annual meeting of the International Association of Judges in Yalta, Ukraine.

16. On 28 October 2013, the Special Rapporteur presented her annual report to the General Assembly (A/68/285), which focused on military tribunals. On the following day, she participated in a round table entitled "Accountable Governance, Peace and Stability in Africa: What Role for the United Nations Human Rights Special Procedures?" organized by the International Peace Institute.

17. On 25 March 2014, she participated through videoconference in the public discussion on "Enforced Disappearances and Military Justice" organized by the Committee on Enforced Disappearances, and presented the findings of her 2013 report to the General Assembly.

III. Judicial accountability

A. Introduction, concepts and definitions

18. Accountability is generally defined as an obligation or willingness to accept responsibility or to account for one's actions.[1] That means that the professionals or institutions being held accountable accept responsibility for acting or functioning in ways that are consistent with accepted standards of behaviour and conduct, and face sanctions for failures to do so.

19. In that regard, accountability is a concept inherent to the rule of law, which is at the heart of the principles promoted by the United Nations. The rule of law, as defined in the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies, requires that accountability mechanisms and procedures be clearly established by law to enhance the transparency, fairness, integrity and predictability of public and private institutions and entities (S/2004/616, para. 6).

20. During her mandate, the Special Rapporteur has observed that the issue of judicial accountability has received renewed attention, especially in the context of democratic and/or judicial reforms. Governments, institutions, human rights defenders, civil society and international organizations have been increasingly calling for concrete action to address the issue of judicial accountability.

21. In many countries, there is dissatisfaction with the way the judiciary is performing the tasks with which it has been entrusted. That may be the result of a variety of factors, including the perception that the judicial system is not operating efficiently, that it is not responding to societies' needs, or that there is widespread corruption in the judiciary.

22. The Special Rapporteur has also noted with concern that, under certain circumstances, failures to improve accountability or to address the issue of judicial corruption or misconduct are often used as a pretext for launching large-scale attacks on the independence of the judiciary.

23. Yet, both independence and accountability are essential elements of an efficient judiciary. They must therefore operate in conjunction with each other. The central question is then how to approach demands for more judicial accountability while safeguarding the fundamental principle of judicial independence. Calls for accountability can often be mistakenly interpreted as a threat to judicial independence, but in democratic systems the approach has to be less absolute and more nuanced and leave room for the development of accountability mechanisms for the justice system. The requirement of independence and impartiality does not exist for the benefit of the judges and prosecutors themselves, but rather for court users as a part of their inalienable right to a fair trial. Thus, if guarantees of independence and impartiality are privileges granted to judges and prosecutors in order to benefit the public, it is logical that mechanisms should be put in place to verify that those privileges are used properly and that their purpose is not perverted.

24. For the purposes of the present report, the term "judicial accountability" will be used to refer to the accountability of the three main operators in the justice system: judges, prosecutors and lawyers.

[1] Merriam-Webster dictionary online. Available from www.merriam-webster.com/dictionary/accountability.

B. Legal framework

25. At the international level, the focus until now has been primarily on defining and developing safeguards that States have to put in place to ensure the independence of their judiciaries. Specific and detailed references to judicial accountability have yet to appear in international human rights instruments.

26. Indirect reference to judicial accountability is, however, found in many binding and non-binding international instruments where terms such as "liability", "accountability" and "responsibility" are used interchangeably in connection with the notion of the proper exercise of the functions of justice operators, who must act with decorum and in accordance with their codes of ethics or conduct.

27. The United Nations Convention against Corruption refers to the promotion of "integrity, accountability and proper management of public affairs and public property" as one of it purposes (art. 1, para. c). It further states that "in order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system" (art. 8, para. 1), and that "each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions" (art. 8, para. 2).

28. In turn, the Basic Principles on the Independence of the Judiciary establish that "judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary" (principle 8). Principle 18 further states that judges should be suspended or removed only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

29. The Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex) were developed in order to establish an international standard for the ethical conduct of judges, to provide guidance on universal judicial ethics and to strengthen judicial integrity. As such, they represent an important attempt to fill the gap in the international legal framework regarding judicial accountability.

30. The preamble to the Bangalore Principles explicitly states that the Principles "presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge". The Bangalore Principles further provide that judges should devote their professional activity to judicial duties and that their conduct should not be incompatible with those duties (value 6).

31. The Universal Charter of the Judge, approved by the International Association of Judges, makes clear reference to the civil and criminal responsibility of judges. In particular, it states that civil action, in countries where it is permissible, and criminal action against a judge, including arrest, must only be allowed under circumstances ensuring that his or her independence cannot be influenced (art. 10).

32. Regarding prosecution services, the Guidelines on the Role of Prosecutors indicate that States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability (guideline 4).

33. The Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, adopted by the International Association of Prosecutors in 1999, state that prosecutors shall at all times maintain the honour and dignity of their profession, always conduct themselves professionally, in accordance with the law and the rules and

ethics of their profession, and at all times exercise the highest standards of integrity and care (standard 1).

34. The Basic Principles on the Role of Lawyers stipulate that "lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession" (principle 23) and that "all disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles" (principle 29). Furthermore, the International Bar Association adopted an International Code of Ethics in 1956 and revised it in 1988, providing guidelines to lawyers in the exercise of their profession.

35. At the regional level, the Council of Europe drew up the European Charter on the statute for judges, which includes specific provisions on liability and addresses aspects directly related to judicial accountability. In fact, in the Charter liability can be interpreted as a synonym of accountability, most specifically in paragraph 5.1, which states that "the dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority ... in which the judge proceeded against must be entitled to representation".

36. In the explanatory memorandum to the Charter, the Council of Europe underscored that the Charter does not necessarily refer to the wrongful or unlawful nature of the conduct or of the exercise of functions, but rather emphasizes the damage sustained as a result of that "wrongful" or "unlawful" nature. The interpretation of liability, as prescribed in the Charter, should therefore be based on the nature of the damage that results from the wrongful conduct, as opposed to the judge's misconduct itself. That interpretation reflects the primary concern that judicial independence not be hampered by civil, criminal and administrative liability systems.

37. In addition, recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe lists a series of duties and responsibilities of judges, including their liability for judicial and non-judicial functions. Furthermore, the Magna Carta of Judges, established by the Consultative Council of European Judges, also emphasizes that "deontological principles, distinguished from disciplinary rules, shall guide the actions of judges. They shall be drafted by the judges themselves and be included in their training" (para. 18). It further provides that "in each State, the statute or the fundamental charter applicable to judges shall define the misconduct which may lead to disciplinary sanctions as well as the disciplinary procedure" (para. 19) and that "judges shall be criminally liable in ordinary law for offences committed outside their judicial office. Criminal liability shall not be imposed on judges for unintentional failings in the exercise of their functions" (para. 20).

38. The Commonwealth (Latimer House) Principles on the Three Branches of Government, adopted by Heads of Government in Abuja in 2003, explicitly use the term "judicial accountability". They highlight the fact that accountability and independence jointly strengthen public trust in the judiciary and that proper procedures for the removal of judges for reasons of incapacity or misbehaviour, as well as any disciplinary procedures, should be fairly and objectively administered in order to ensure that judicial accountability does not impair judicial independence.

39. Focusing on judicial practice, the Commonwealth Principles clearly link judicial ethics, which should respect and be guided by codes of ethics and conduct, and judicial accountability. The Principles underline that, as a vital element of democracy, an independent judiciary must be built on public trust. It is therefore crucial that accountability, professional ethics and conduct be respected in the exercise of judicial

functions. As a result, transparency in the judiciary must be guaranteed so as to avoid corrupt practices that undermine judicial independence and public confidence in the justice system.

40. The Statute of the Iberoamerican Judge, in its article 14, establishes that judges can be suspended or removed from office for reasons of physical or mental incapacity, negative assessment of their professional performance in the cases where the law so provides, or criminal or disciplinary responsibility, by the bodies legally established through procedures that guarantee the respect of due process.

41. The Declaration of Minimum Principles on the Independence of Judiciaries and Judges in Latin America, adopted by the General Assembly of the Latin American Federation of Judges in 2008, states that, as a general rule, judges are not personally civilly liable for their decisions, with the exception of cases of fraud or intentional misconduct. Moreover, in cases of repeated omission or excessive and unjustified delay attributable to judges, they should be liable for negligence, but through disciplinary action only; additionally, judges' civil responsibility can be sought only after all possibilities of procedural and appellate claims have been exhausted and only by the civilly aggrieved party. The Declaration further stipulates that both civil action, when admissible, and criminal action directed against judges, including arrest, should be exercised under conditions that cannot aim to influence the judges' judicial activity (para. 11). The Declaration also makes reference to activities which are incompatible with judicial functions, such as judges joining political parties, performing political party activities, or exercising a political activity or holding political office (para. 7 b (6)).

42. The Convention on the Prevention and Combating of Corruption, adopted by the African Union in 2003, enumerates among its objectives the establishment of the necessary conditions to foster transparency and accountability in the management of public affairs (art. 2, para. 5). It also provides that States parties undertake to create an enabling environment that will allow civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs (art. 12).

43. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa also make reference to the liability of judicial officers, stating that they shall not be "liable in civil or criminal proceedings for improper acts or omissions in the exercise of their judicial functions" or "removed from office or subject to other disciplinary or administrative procedures by reason only that their decision has been overturned on appeal or review by a higher judicial body" (A 4 (n)).

44. The Beijing Statement of Principles on the Independence of the Judiciary, adopted in 1995 by the Sixth Conference of Chief Justices of Asia and the Pacific, makes an indirect reference to accountability mechanisms for judges. It states that "judges should be subject to removal from office only for proved incapacity, conviction of a crime, or conduct that makes the judge unfit to be a judge" (para. 22).

45. In addition to those international and regional instruments, the human rights treaty bodies and regional human rights mechanisms have developed significant jurisprudence addressing the importance of judicial accountability for the effective realization of human rights, which will be discussed later in the report.

46. Nevertheless, the lack of an international instrument that directly and specifically addresses the issue of judicial accountability reveals a serious gap. Filling that gap could be critical to defining and implementing the principle of judicial accountability in line with the principle of judicial independence and other relevant international human rights standards.

C. Forms of judicial accountability

47. The notion of accountability is intrinsic to the rule of law and is often used in international and regional instruments to encompass the concepts of responsiveness, responsibility, liability, controllability and transparency in the justice system. Owing to its comprehensiveness, the term "accountability" is used generically in the title of any mechanism that aims to make institutions responsive to their respective public. In its practical sense, accountability is, in essence, a mechanism to secure the control of public power.

48. Based on that understanding, the implementation of judicial accountability mechanisms implies that certain parties can and should exercise power of supervision and control over others. Thus, in order to prevent abuses of power and improper influence by the supervising parties, a clear set of standards must be established so that justice operators and institutions are not held to account in an arbitrary way. Accountability presupposes the recognition of the legitimacy of established standards, clear mechanisms and procedures established by law, and clear rules on the authority of the supervising parties.

49. In order for judicial accountability mechanisms to be put into practice, the relationship between the justice operator to be held accountable and the forum, body or institution to which he or she must respond also needs to be clearly defined. The justice operator to be held accountable must have the means to properly explain and justify any conduct or action deemed inadequate, inappropriate or illegal through due process. The forum, body or institution exercising judicial accountability must be entitled to pose questions and assess whether the justice operator should face sanctions or not. There is therefore a close connection between accountability, which involves the possibility of imposing sanctions, and the concept of answerability, which entails non-committal provision of information.

50. In that regard, it is paramount that States undertake efforts to enact specific legislation establishing a comprehensive system of judicial accountability that is effective, objective and transparent with a view to strengthening the rule of law and improving the administration of justice.

51. While the Special Rapporteur supports the view that judicial independence and accountability are two complementary dimensions of an effective justice system, she also observes that tensions exist between the two principles. The tensions result mainly from the lack of an established, but widely needed, concept of judicial accountability. Indeed, in general, priority has been given to developing and strengthening the independence of the judiciary to the detriment of the establishment and proper functioning of accountability mechanisms, as it was thought that reinforcing independence would have more direct influence on ensuring the protection of human rights and the rule of law.[2]

52. Against that background, it is important to balance the concepts of judicial immunity, one of the guarantees of judicial independence, and accountability. Judicial immunity aims at protecting justice operators from the harassment of personal litigation against them in respect of their judicial functions, allowing them to be sued or prosecuted only with the authorization of an appropriate judicial authority. While it is important that justice operators be granted some degree of criminal immunity in relation to the exercise of their professional functions in order to protect them from unwarranted prosecution, immunity should never be applied to cases of serious crime, including accusations of corruption. Judicial immunity needs to be limited and serve its purpose of protecting the

[2] Transparency International, *Global Corruption Report 2007: Corruption and Judicial Systems*, p. 41.

independence of justice operators; total immunity would only nourish distrust among the public towards the justice system as a whole.

53. The Special Rapporteur encourages States to establish specific norms related to judicial immunity in order to avoid abuses. She further recommends that States develop international guidelines on the scope and application of judicial immunity, as it varies from country to country, which sometimes results in impunity.

54. In order to ensure a proper balance between independence and accountability, justice operators should act in accordance with predefined ethical standards and the duties and responsibilities intrinsic to their functions. In addition, in order for judicial accountability to be adequately implemented, accountability mechanisms must themselves function with independence so as to prevent external interferences that may impair the transparency, objectivity and impartiality of the processes.

55. When it comes to establishing judicial accountability mechanisms, it is important to define the concept of judicial accountability and clearly establish the actions for which justice operators should be accountable, to whom they should be accountable and through which processes. Generally, the judiciary, like other public institutions, must be accountable to the public it serves; that can be defined as an external form of accountability. The exercise of external accountability can, nevertheless, raise serious concerns regarding the misuse of accountability mechanisms to hinder judicial independence. The Special Rapporteur therefore believes that external judicial accountability should take the form of: public hearings and the publication of court decisions, allowing public scrutiny of and comment on the work of judges through the media, civil society and other commentators; an annual report to parliament, allowing parliament to take informed initiatives to reverse the effect of a judicial decision by introducing new legislation; and information on the judiciary made available on the judiciary's website. Codes of conduct and ethics, clear disciplinary proceedings established by law, and independent bodies for the self-government of the judiciary, the public prosecutor's office and the legal profession also provide a form of accountability to the public by ensuring the effective implementation of individual accountability mechanisms.

56. The Special Rapporteur is also of the view that, if independence can be interpreted from both an individual and an institutional perspective, so can accountability. Indeed, judicial accountability should not be interpreted exclusively in relation to the conduct of the individual justice operator; rather, it should be further analysed from an institutional perspective.

1. Individual accountability

57. Individual accountability is directly related to the responsibility incumbent on justice operators to uphold high standards of conduct. Accountability mechanisms specific to judges include, but are not limited to, the requirements to write reasoned individual judgments in a language that is understandable to the beneficiaries of justice, explain personal views on the law and the constitution to the general public, and comply with a registration system of pecuniary and other interests.

58. Individual accountability should also encompass extrajudicial conduct, other permitted professional activities and the private lives of justice operators. While those individuals also enjoy fundamental rights and freedoms and are free to engage in non-judicial activities, certain activities such as membership of a political party or public engagement in political activities may jeopardize the impartiality and independence of their

professional functions.[3] In some instances, national jurisprudence has considered that political activities are incompatible with judges' duties;[4] such incompatibility is included in the codes of conduct of some States. The Special Rapporteur strongly believes that justice operators should refrain from taking part in any activity which could compromise the dignity of their office or cause conflicts of interest that could hamper public confidence in the justice system.[5]

Judges

59. The principle of the independence of the judiciary is not aimed at benefitting judges themselves, but at protecting individuals from abuses of power and ensuring that court users are given a fair and impartial hearing. As a consequence, judges cannot act arbitrarily by deciding cases according to their own personal preferences. Their duty is the fair and impartial application of the law. Judges must therefore be accountable for their actions and conduct, so that the public can have full confidence in the ability of the judiciary to carry out its functions independently and impartially.

60. Clear rules of conduct and ethics must be established for judges so that they can behave according to standards that are appropriate to their judicial functions. The Basic Principles on the Independence of the Judiciary and the Bangalore Principles of Judicial Conduct provide useful guidelines for appropriate and adequate judicial behaviour and indicate conduct and activities that should be avoided by judges if they are to preserve their propriety as an essential element of their activities (Bangalore Principles, value 4). Judges, however, should also be provided with some privileges that can guarantee their independence and impartiality, such as personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions, which aim to prevent sanctions in relation to the content of decisions (Basic Principles, principle 16).

61. In its jurisprudence, the Human Rights Committee has expressed concern about a judicial reform that would enable the removal of judges as a result of the performance of their duties (CCPR/CO/71/VEN, para. 13). The Committee has also stated that appointing judges for a limited term of five years and the possibility, provided by law, of subjecting judges to disciplinary measures because of "incompetent rulings" (CCPR/CO/71/UZB, para. 14) or "errors in judicial decisions" (CCPR/CO/75/VNM, para. 10) expose them to pressure and endanger their independence and impartiality. In addition, the Committee has expressed concern in cases in which judges are subject to criminal liability for handing down unjust judgements, recommending that States parties ensure that judges may not be removed from their posts unless they are found guilty of inappropriate conduct by an independent tribunal (CCPR/CO/75/VNM, para.10). According to the Committee, "judges should be removed only in accordance with an objective, independent procedure prescribed by law" (CCPR/CO/75/MDA, para. 12).

62. In turn, the African Commission on Human and Peoples' Rights considered that a State violated principles 18 and 19 of the Basic Principles on the Independence of the Judiciary by failing to give any legal reasons to justify the retention of the punishment

[3] Opinion No. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, paras. 27–28.

[4] See, for instance, *Caso sobre la inconstitucionalidad del Presidente de la Corte Suprema de Justicia*, Supreme Court of El Salvador, 14 October 2013.

[5] Opinion No. 3 of CCJE, para. 39.

meted out to two magistrates.[6] The two were among a number of magistrates who had been suspended, dismissed or forced to retire. Some magistrates affected by that measure were subsequently reinstated by virtue of an amnesty, while many others, including the two magistrates mentioned above, were not.

63. The Special Rapporteur believes that individual accountability should be applied to all judges, including magistrates of the highest courts. In a 2013 mission report, she recommended that supreme court magistrates be removed from office only for specific causes previously established by law. Legislation should explicitly indicate the grounds on which magistrates can be dismissed (A/HRC/23/43/Add.1, para. 74).

Prosecutors

64. Prosecutors play a crucial role in the administration of justice and must, therefore, be able to "perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability".[7] Prosecutors are also essential for upholding the rule of law and ensuring that the law applies equally to everyone, as they have a duty to "give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law".[8]

65. In a previous report, the Special Rapporteur emphasized that the autonomy of prosecutors should not exist to the detriment of accountability (A/HRC/20/19, para. 82). Prosecutors can be held accountable through the submission of public reports by the Prosecutor General, the implementation of public audits for financial or organizational issues, the submission of prosecutorial activities to judicial scrutiny, the establishment of a prosecutorial council or similar independent body, monitoring by the executive or parliamentary accountability (para. 84).

Lawyers

66. Lawyers are also indispensable for the protection and promotion of human rights and for guaranteeing fair trial and due process. While lawyers are not expected to be impartial in the same way as judges, they must be as free as judges from external pressure and interference. When guarantees are not in place to enable lawyers to discharge their duties in an independent manner, the door is open to all sorts of pressure and interference aimed at influencing or controlling judicial proceedings (A/HRC/23/43/Add.3, para. 86).

67. Nevertheless, lawyers must be accountable with regard to their professional functions. They must conduct themselves according to ethical standards and clearly established norms of behaviour.[9] The Basic Principles on the Role of Lawyers state that "lawyers shall at all times maintain the honour and dignity of their profession" (principle 12) and that "lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession" (principle 13). Those provisions, however, must be interpreted without prejudice to the application of administrative, criminal or civil liability in cases of violations of established standards of conduct and ethics.

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[6] African Commission on Human and Peoples' Rights, *Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*, communication No. 204/97 (2001).

[7] Guidelines on the Role of Prosecutors, guideline 4.

[8] Idem, guideline 15.

[9] International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: Practitioners Guide No.1*, 2nd ed. (Geneva, 2007), p. 68.

68. The Special Rapporteur has expressed concern at cases in which lawyers have been sanctioned because of political activities, advocacy work, confusion between the lawyer's cause and his/her client's cause, and involvement in the legal representation of clients in sensitive cases. In that context, she has urged States to refrain from criminally convicting or disbarring lawyers for the purposes of silencing them, preventing them from criticizing public policies or obstructing them in their legal representation of specific clients.

2. Institutional accountability

69. State institutions should be as accountable as they are independent in order to play the role of respecting the rule of law. Institutional judicial accountability must, therefore, embrace the entire institutional organization of the justice system in a way that enables it to be monitored and held to account without being subject to improper influence, pressure or threats from the other branches of the State.

70. It is important to highlight that both the judiciary and the public prosecutor's office are State institutions. Therefore, their actions or omissions directly engage the responsibility of the State. The accountability of the institutions of the justice system involves internal and external aspects.

71. Internal institutional accountability exists to allow an internal body within the judiciary and the public prosecutor's office to monitor the independence, competence, objectivity and impartiality of their respective operators through permanent monitoring proceedings aimed at controlling their proper functioning. Those monitoring proceedings can also be initiated by complaint. The Special Rapporteur has observed several challenges to the effective implementation of internal accountability mechanisms, including corporatism and the use of accountability proceedings as an instrument of reprisal or internal pressure.

72. In order to avoid the improper use of accountability mechanisms, it is crucial that the following elements are in place: clear grounds for a removal, suspension or sanction; an independent, internal body in charge of disciplinary proceedings; and the right to have disciplinary decisions reviewed by a higher judicial tribunal. In that context, the adoption of a code of ethics and conduct is essential to contribute to the establishment and regulation of accountability proceedings and mechanisms.

73. External institutional accountability, in turn, should encompass activities whereby the public, through the media, civil society, human rights commissions and parliament, can scrutinize the functioning of the judiciary and prosecution services. Such activities can include: institutional dialogues with parliament and other State institutions, such as human rights commissions; all hearings being public; the availability and transparency of information about courts and the judiciary; and the creation of a judiciary website and the use of social media and television programmes to explain important judicial decisions and laws. A system of justice that is independent should not retreat behind closed doors.

74. The institutional accountability of lawyers' activities depends, in practice, on how the legal profession is regulated and controlled and by which body. The Special Rapporteur has observed that, depending on the country, that role is exercised by the executive, the judiciary, independent bar associations, or bodies whose members come from the different branches of the State and the legal profession.

75. The Special Rapporteur wishes to emphasize that the accountability mechanisms put in place for the legal profession should be independent from all branches of the State, including the judiciary. The Special Rapporteur has always strongly recommended the establishment of independent bar associations to deal with all matters pertaining to the legal profession, including disciplinary proceedings. Disciplinary proceedings against lawyers

should also follow procedures established by law and respect due process and fair trial guarantees.

76. Thus, in general terms, when institutional accountability fails, the responsibility of the State and the possible recognition of the right to effective remedy might be triggered. As highlighted in the Magna Carta of Judges, "the remedy for judicial errors should lie in an appropriate system of appeals. Any remedy for other failings in the administration of justice lies only against the State" (para. 21).

D. Judicial accountability mechanisms and proceedings

77. Accountability mechanisms and proceedings are justified because justice operators must behave with integrity and in line with their code of ethics and conduct. Indeed, international principles state that violations of established standards of judicial conduct or ethics may trigger disciplinary, civil or criminal liability.

78. In that context, regardless of the institutional structure implemented by States, accountability mechanisms and proceedings should respect general principles. To avoid being used as a means to interfere with the independence of the judiciary and the legal profession, accountability mechanisms should follow clear procedures and objective criteria provided for by law and established standards of professional conduct. More specifically, national legislation should clearly distinguish between disciplinary, civil and criminal liability and prescribe the types of sanctions to be applied. Disciplinary liability ensues when an administrative rule or regulation connected to the code of conduct or ethics is violated. Civil liability relates to the possibility of demanding that a justice operator who has caused injury by a particular course action or improper conduct repair the personal, property or financial damage he or she has caused. Criminal liability arises when a justice operator commits an illicit action or omission of a criminal nature. In that case, the individual should be submitted to a criminal investigation and possibly to prosecution, conviction and punishment.

79. All complaints made against justice operators should be processed expeditiously and fairly and the determination as to whether particular behaviour or conduct constitutes a cause for sanction must be carried out by an independent and impartial body pursuant to fair proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights and articles 10 and 11 of the Universal Declaration of Human Rights. That includes the principle of the presumption of innocence, the right to be tried without undue delay, and the right to defend oneself in person or with legal counsel of one's own choosing. In addition, in the case of judges, the investigation and proceedings against them should be kept confidential as, even if found innocent, the damage to their reputation could prove irreversible.

80. International and regional jurisprudence has confirmed how important it is that any accountability mechanism and proceedings respect the aforementioned general principles of a fair trial. For instance, in *Cedeño v. Bolivarian Republic of Venezuela* (communication No. 1940/2010), the Human Rights Committee recalled that States should establish clear procedures and objective criteria for the suspension and dismissal of the members of the judiciary and for disciplinary sanctions against them.

81. In *Harabin v. Slovakia*, the European Court of Human Rights underlined that the existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, was a relevant factor for the internal organization of the State. The Court emphasized that the mission of the judiciary in a democratic State was to guarantee the very existence of the rule of law. It therefore interpreted it as a matter of major

importance when a Government initiated disciplinary proceedings against a judge in his or her capacity as President of the Supreme Court.[10]

82. In *Chocrón Chocrón v. Venezuela*, the Inter-American Court of Human Rights sustained that any disciplinary removal procedure could only be admissible in the context of a disciplinary procedure or a duly-founded administrative decision. The Court highlighted that the obligation to found decisions is a guarantee related to the correct administration of justice, which protects the right of the people to be tried for the reasons established by law and grants credibility to judicial decisions in a democratic society.[11]

83. In *Oleksandr Volkov v. Ukraine*, the European Court of Human Rights established that the applicant, a former judge, had been dismissed in violation of the fundamental principles of procedural fairness enshrined in article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, such as the principles of an independent and impartial tribunal and legal certainty, and the right to be heard by a tribunal established by law. The Court noted that the violations found in the case suggested that the system of judicial discipline did not ensure sufficient separation of the judiciary from other branches of State power and did not provide appropriate guarantees against abuse and misuse of disciplinary measures to the detriment of judicial independence.[12] In *Olujić v. Croatia*, the Court ruled that, in order to establish whether a body can be considered independent, regard must be had, inter alia, to the manner of appointment of its members and to their term of office, to the existence of guarantees against outside pressure and to the question of whether the body presents an appearance of independence. The Court concluded by emphasizing that independence and impartiality are essential in disciplinary proceedings.[13]

84. In order to safeguard the independence of justice operators, accountability mechanisms and proceedings must therefore have a restricted application. In relation to judges, international standards state that disciplinary measures and sanctions against them can be triggered only for reasons of incapacity or behaviour that render them unfit to discharge their duties and in cases provided for by the law.[14] As a result, judges should not be removed or punished for bona fide errors or for disagreeing with a particular interpretation of the law.[15] Judges and prosecutors can be justifiably disciplined, suspended or removed from office for persistent failure to perform their duties, habitual intemperance, wilful misconduct in office, conduct which brings judicial office into disrepute or substantial violation of judicial ethics. In particular, justice operators must be duly held to account when engaged in corrupt practices. Indeed, judicial independence and immunity do not mean impunity and irresponsibility.

85. The Human Rights Committee has confirmed that position by expressing concern at cases of widespread corruption in the justice system. It has recommended that States parties take measures to eradicate corruption by investigating, prosecuting and punishing alleged perpetrators, including judges who may be complicit.[16] It has further stated that if

[10] Application No. 58688/11, final judgment of 20 February 2013, paras. 132–133.
[11] Judgment of 1 July 2011, paras. 117–118.
[12] Application No. 21722/11, judgment of 9 January 2013, paras. 199 and 205.
[13] Application No. 22330/05, judgment 5 May 2009, para. 38.
[14] Basic Principles on the Independence of the Judiciary, principle 18.
[15] International Commission of Jurists, 2007, p. 55.
[16] See, for example, CCPR/C/TKM/CO/1, para. 13; CCPR/C/CPV/CO/1, para. 15; CCPR/C/PRY/CO/3, para. 23.

corruption is established, the officials concerned should face criminal, not only disciplinary, sanctions.[17]

86. Regarding the legal profession, international standards indicate that disciplinary proceedings should be based on codes of professional conduct.[18] In that regard, lawyers should be subject to disciplinary, civil and criminal sanctions concerning their professional duties and responsibilities as agents of the administration of justice.

87. The Special Rapporteur supports the view that justice operators should be held accountable for instances of professional misconduct that are gross and inexcusable and that also bring the judiciary into disrepute.[19] However, in order to ensure the independent exercise of their functions, they should not be subject to disciplinary proceedings or sanctions relating to the content of their rulings, verdicts, or judicial opinions, judicial mistakes or criticism of the courts.[20] The Special Rapporteur also emphasizes the importance of a code of ethics or conduct, which should be established with the participation of associations and representatives of justice operator and should be applied in a consistent and transparent manner, with full respect for the fundamental guarantees of a fair trial and due process. Furthermore, training on the duties and responsibilities of each justice operator should be made available to all of them. Education is an important instrument to strengthen accountability by raising awareness of codes of ethics and conduct, rules of procedure and the possible consequences of breaches of those norms. With proper training and education, justice operators can more easily acknowledge the importance of acting with dignity and integrity and are appropriately guided to behave in accordance with the duties and responsibilities of their functions.

Institutions and bodies in charge of overseeing the accountability of the justice system

88. The independence of justice operators and of the judiciary itself exists in order to guarantee equality and fairness to court users. For that reason, the accountability of the justice system's operators must be ensured by the State and specific and clear accountability mechanisms and proceedings must be established to deal with formal complaints or even public criticism of justice operators' actions and conduct. Such instruments should also enable judges, prosecutors and lawyers to explain their actions. The proceedings should be transparent, impartial, fair, objective, and should not undermine the credibility of the justice system as a whole; justice operators should not fear arbitrary removal from office or sanctions.

89. Precisely because the judiciary exists to answer to public interest, it must be subject to public scrutiny. It is imperative that the beneficiaries of the justice system can assess whether judges, prosecutors and lawyers are duly exercising their functions and responsibilities and whether the system itself is functioning independently and impartially. In that context, civil society has an invaluable role to play. By monitoring the proper functioning of the justice system, it encourages engagement through a substantive and transparent dialogue between justice operators, the other powers of the State and the general public.

90. Besides public scrutiny, there should be an independent body in charge of holding judges and prosecutors accountable at the same time as it protects their independence. That body should foster transparency in all disciplinary proceedings and provide defendants with

[17] See CCPR/C/YEM/CO/5, para. 17.

[18] Basic Principles on the Role of Lawyers, principle 26.

[19] Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, para. 25.

[20] Ibid.

procedural safeguards, including the right to present a defence and to appeal to a competent higher court.[21]

91. Indeed, the Human Rights Committee has indicated that, in order to ensure the independence of the judiciary, States should establish an independent body responsible for the appointment and promotion of judges, as well as for the application of disciplinary regulations.[22] The Committee has also recommended that States parties should strengthen the independence of the judiciary by providing for judicial, rather than parliamentary, supervision and discipline of judicial conduct.[23]

92. The composition, structure and mandate of those independent bodies vary from one judicial system to another, but some general guidelines should be taken into account for their functioning in order to ensure that they act in accordance with international standards.

93. In order to perform its tasks with propriety, a commission or council for the judiciary should preferably be composed entirely of members of the judiciary, retired or sitting, although some representation of the legal profession or academics could be advisable. No political representation should be permitted, in order to prevent politicization and avoid external influences that can compromise the implementation of measures to ensure the independence, impartiality, integrity and accountability of the judiciary. In addition, the independent body should manage its own budget and have enough human and financial resources to properly function with independence. It should also be accountable for its activities, in order to avoid the possible public perception that it works only for the self-interest and self-protection of the profession. Independent bodies in charge of the accountability of prosecutors could follow a similar structure, while their composition should be adapted.

94. With regard to the legal profession, an independent professional organization or bar association should be established to represent the interests of lawyers, regulate their entry to the profession, protect their professional integrity and apply disciplinary proceedings.

95. As mentioned above, the regulation, monitoring and accountability of the legal profession is usually exercised by the executive, the judiciary, or bar associations. The Special Rapporteur underlines that it is contrary to the Basic Principles on the Role of Lawyers that licenses to practise law, as well as disciplinary measures, be controlled by the executive.

96. The Special Rapporteur has consistently and strongly supported the establishment of an independent, self-regulating bar association or council to oversee the process of admitting candidates to the legal profession, provide for a uniform code of ethics and conduct, and enforce disciplinary measures, including disbarment. Such an association would not only provide a mechanism to protect its members against undue interference in their legal work, but also monitor and report on the members' conduct, ensuring their accountability and applying disciplinary measures in a fair and consistent manner (A/HRC/23/43/Add.3, paras. 87 and 88).

IV. State responsibility and the right to a remedy

97. International and regional standards recognize the civil responsibility of the State by ensuring effective remedies for persons whose human rights have been violated owing to

[21] Ibid., para. 26.
[22] See CCPR/C/ARM/CO/2-3, para. 21.
[23] See CCPR/CO/79/LKA, para 16.

wrongful conviction or miscarriage of justice.[24] That means that the civil responsibility of the State could be engaged through both individual and institutional accountability mechanisms. As a result, compensation could imply some form of reparation for damage caused following a personal error made by a judge when exercising his or her jurisdictional function or of the justice system as a whole. In that regard, effective remedies could encompass the effective recourse to a competent court or tribunal, the right to judicial protection, access to court and compensation for wrongful judicial acts.

98. In its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee has emphasized that States should enact legislation ensuring that compensation can in fact be paid and that the payment is made within a reasonable period of time (para. 52). In the case of *Dumont v. Canada*, for instance, the Committee considered that delays of nine years in civil proceedings had deprived the victim of an effective remedy (communication No. 1467/2006, para. 23.6). The Committee has also recalled on many occasions that the supervisory review procedure against court decisions which have entered into force constitutes an extraordinary means of appeal which is dependent on the discretionary power of a judge or prosecutors and is limited to issues of law and does not permit any review of facts and evidence.[25]

99. The Committee has consistently emphasized that the requirement to exhaust domestic remedies applies only to the extent that those remedies are effective and available.[26] The State must give details of the remedies available to the victim, together with evidence that there would be a reasonable prospect that such remedies would be effective.[27] Similarly, in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, the Human Rights Committee emphasized that all branches of the State (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party to the Covenant (para. 4). It added that States parties should award reparation and appropriate compensation to individuals and noted that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations and taking measures to prevent a recurrence of the type of violation in question (paras. 16–17).

100. The right to a remedy is also enshrined in non-binding instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which stipulates that compensation could include an effective judicial remedy, access to court or access to administrative and other bodies. It could also encompass payment for the harm or loss suffered, reimbursement of expenses incurred as a result of victimization, the provision of services and the restorations of rights.

101. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law go further by explaining that restitution should, whenever possible, restore the victim to their original situation before the gross violation of his or her rights took place. The Principles stipulate that compensation should be provided for any

[24] See, for instance, article 8 of the Universal Declaration of Human Rights and articles 2 and 14 of the International Covenant on Civil and Political Rights.

[25] See, for instance, *Sudalenko v. Belarus*, Communication No. 1750/2008, para. 8.3, and *Kovaleva et al. v. Belarus*, Communication No. 2120/2011, para. 10.4.

[26] Report of the Human Rights Committee, A/68/40 (Vol. I), para. 163.

[27] Ibid.

economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: physical or mental harm; lost opportunities, including employment, education and social benefits; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Satisfaction could include judicial and administrative sanctions against the persons liable for the violation, and guarantees of non-repetition, which involve, for instance, strengthening the independence of the judiciary as a means of prevention.

102. The European Convention for the Protection of Human Rights and Fundamental Freedoms includes the right to access to court (art. 6) as an important element in remedying violations, and the rights to an effective remedy (art. 13) and reparation (art. 41). In addition, Protocol No. 7 to the Convention explicitly refers to the right to compensation for wrongful conviction (art. 3).

103. In the African system, the right to compensation for a miscarriage of justice is also enunciated in the Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa (N, 10 (c)). More specifically, the Principles list a series of measures to be implemented, including the guarantee that anyone who has been the victim of unlawful arrest or detention is able to claim compensation (M, 1 (h)).

104. In the Inter-American system, the American Convention on Human Rights enshrines, in its article 10, the right to be compensated in the event of a miscarriage of justice and, in its article 25, the right to judicial protection.

105. The Special Rapporteur wishes to call upon States to adopt and implement a definition of remedy for a miscarriage of justice that is comprehensive and not limited to criminal cases, in order to provide effective remedies to persons whose human rights have been violated.

V. Conclusions

106. **Accountability, as a component of the rule of law, implies that nobody is above the law, including judges, prosecutors and lawyers. Judicial accountability exists to avoid the improper, inadequate or unethical behaviour of justice operators and, as such, it is closely related to judicial independence. Judicial independence is not absolute, but limited by the framework set by judicial accountability which, in turn, must respect the fundamental principles of the independence of the judiciary and the separation of powers, and its proceedings must be in line with international standards of due process and fair trial.**

107. **Judicial accountability can take many forms. Its mechanisms and proceedings should encompass not only justice operators, but also the justice system as a whole. Embracing both an individual and institutional perspective, judicial accountability should respect fundamental human rights principles, guarantee fair proceedings and follow clear procedures and objective criteria provided for by the law, and be grounded on established standards of professional conduct in order to avoid it being used as a means of interfering with the work of members of the judiciary and hampering their independence and that of the legal profession.**

108. **Important challenges remain for the implementation of judicial accountability, such as corporatism, the use of such accountability as an instrument of reprisal or external and internal pressure against justice operators and the lack of international standards to help States overcome those difficulties. The Special Rapporteur believes it is time for States to develop and adopt international standards of judicial**

accountability to guide and frame the establishment of domestic systems of judicial accountability that are effective, objective, transparent and in line with international human rights law.

VI. Recommendations

109. The Special Rapporteur makes the following recommendations with the aim of assisting States in developing and implementing appropriate and effective measures to establish judicial accountability mechanisms in line with the international principles of judicial independence and impartiality.

Legal framework on judicial accountability

110. States should cooperate to develop and adopt international standards for judicial accountability.

111. States should consider enacting specific legislation at the domestic level establishing a comprehensive system of judicial accountability that is effective, objective, transparent and in line with their international human rights obligations.

Forms of judicial accountability

112. A clear set of standards should be established on how to exercise supervisory powers of accountability, so that justice operators and the judicial institution are not held to account arbitrarily.

113. The relationship between the individual to be held accountable and the forum, body or institution to which he or she must respond also needs to be clearly defined.

114. States should also develop international guidelines on the application of judicial immunity. In accordance with those guidelines, States should establish domestic norms on judicial immunity in order to avoid abuses.

Individual accountability

115. Individual accountability should be applied to all justice operators, that is, judges, prosecutors and lawyers at all levels of their respective careers.

116. Specific individual accountability mechanisms should include, but are not limited to, the obligation to write individual reasoned judgments or opinions in a language that is understandable to the beneficiaries of justice; the possibility of explaining personal views on the law and the constitution to the general public; and disclosing one's financial and other assets through an official registration system.

117. Individual accountability should also encompass extrajudicial conduct, other permitted professional activities and the private lives of justice operators.

118. Justice operators must be provided with clear rules of conduct and ethics in order to ensure that they behave in accordance with accepted standards that are appropriate to their professional functions.

Institutional accountability

119. The justice system in its entirety should be submitted to accountability mechanisms to ensure that it is functioning with independence, competence, objectivity and impartiality.

120. A code of ethics and conduct should be established for all justice operators, with the participation of their respective associations and representatives. Such codes should be applied in a consistent and transparent manner, with full respect for the fundamental guarantees of fair trial and due process.

121. States should improve the transparency of the justice system. Hearings and decision-making should be made public so as to permit public scrutiny of the work of justice operators. Decisions should be rendered in written form, be reasoned and be published on databases and websites in order to make them truly accessible and free of charge.

122. The transparency of the justice system should also encompass mechanisms relating to other State powers, civil society, the media, the police, public prosecutors and human rights commissions, among others.

Accountability mechanisms and proceedings

123. Accountability mechanisms and proceedings should respect the fundamental guarantees of fair trial and due process and should be implemented by an independent and impartial body. Accountability procedures should be limited to instances of professional misconduct that are gross and inexcusable and that also bring the judiciary into disrepute.

124. All justice operators should be provided with training and education on their respective codes of ethics and conduct, rules of procedure and the consequences if those norms are breached.

Institutions and bodies in charge of overseeing the accountability of the justice system

125. Judicial accountability should be undertaken through an independent body. That body should have the role of protecting judicial independence and promoting judicial accountability.

126. Regarding the judiciary, the independent body should preferably be composed entirely of judges, retired or sitting, although some representation of the legal profession or academia could be advisable. No political representation should be permitted. In addition, the independent body should manage its own budget, have enough human and financial resources to carry out its mandate and be accountable for its activities.

127. Independent bodies in charge of the accountability of prosecutors could follow a similar structure to those for judges.

128. An independent professional organization should be established to represent the interests of lawyers, oversee the process of admitting candidates to the profession, promote their continuing education and training, protect their professional integrity and enforce disciplinary proceedings in a fair and consistent manner.

129. The right to have disciplinary decisions reviewed by a higher judicial tribunal should be guaranteed for judges, prosecutors and lawyers alike.

State responsibility and the right to a remedy

130. The judiciary and the justice system as a whole engage the responsibility of the State. States should therefore provide effective remedies to individuals who have suffered damage owing to wrongful convictions or any other miscarriage of justice.